

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for the
Annexation of Certain Land to the City
of St. Paul Park Pursuant to Minnesota
Statutes 414 (A-7212)

ORDER ALLOCATING THE
COSTS OF HEARING

The Prehearing Order issued in this matter on April 12, 2005, required the parties to file argument by April 18, 2005 regarding how the costs of the Office of Administrative Hearings should be allocated among the parties. The parties did not agree on how the costs were to be allocated.

R. Gordon Nesvig, Attorney at Law, Box 255, Cottage Grove, MN 55016, the Co-Petitioner, filed argument on his own behalf. Co-Petitioner D.R. Horton, is represented by Laurie J. Miller, Esq., Fredrikson & Byron, P.A., 4000 Pillsbury Center, 200 South 6th Street, Minneapolis, MN 55402. James F. Shiely, Jr., Esq., Gearin & Shiely, P.A., 500 Degree of Honor Building, St. Paul, MN 55101 represents the City of St. Paul Park. David T. Magnuson, Esq., Magnuson Law Firm, 333 North Main Street, Suite 202, P.O. Box 438, Stillwater, MN 55082, represents Grey Cloud Island Township.

IT IS HEREBY ORDERED:

1. That Co-Petitioner, D.R. Horton, Inc., shall pay sixty percent (60%) of the costs of this proceeding.
2. Grey Cloud Island Township shall pay forty percent (40%) of the costs of this proceeding.

Dated this 21st day of April, 2005.

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

MEMORANDUM

This proceeding has been brought under Minn. Stat. Chap. 414. That chapter requires disputes over municipal boundaries to be submitted to alternative dispute resolution processes. Where the parties cannot agree, the

matter may be submitted to the Office of Administrative Hearings for hearing. Minn. Stat. § 414.12, subdivision 3 states:

Subd. 3. **Cost of proceedings.** The parties to any matter directed to alternative dispute resolution under subdivision 1 or delegated to the office of administrative hearings under subdivision 2 must pay the costs of the alternative dispute resolution process or hearing in the proportions that they agree to. Notwithstanding section 14.53 or other law, the office of strategic and long-range planning is not liable for the costs. If the parties do not agree to a division of the costs before the commencement of mediation, arbitration, or hearing, the costs must be allocated on an equitable basis by the mediator, arbitrator, or chief administrative law judge. The chief administrative law judge may contract with the parties to a matter directed or delegated to the office of administrative hearings under subdivisions 1 and 2 for the purpose of providing administrative law judges and reporters for an administrative proceeding or alternative dispute resolution. The chief administrative law judge shall assess the cost of services rendered as provided by section 14.53.¹

The proponents of the petition (Mr. Nesvig, D.R. Horton, and St. Paul Park) seek an allocation of costs with the proponents paying 50% and Grey Cloud Island paying 50%. They argue that Grey Cloud Island is the only party in opposition and is therefore responsible for the contested case hearing. They believe that the costs should be split equally between those for and against the annexation. Grey Cloud Island points out it is a small township and argues that the costs should be based on the ability to pay.

The statute requires costs to be assessed on an “equitable basis.” While Grey Cloud Island requested the hearing, it does have a statutory right to contest the proposed annexation in an evidentiary hearing. The three proponents do stand to benefit if they prevail in this matter. They have agreed to split the costs among themselves with D.R. Horton actually paying the assigned Office of Administrative Hearings costs. Having reviewed the arguments and considering the respective positions of the parties, it is equitable to assess 40% of the costs to Grey Cloud Island and the balance to the petitioners and St. Paul Park in a proportion that they agree to pay.

RRK

¹ Minn. Stat. § 14.53 is the general requirement that the Office of Administrative Hearings assess agencies for the cost of hearings.